PRELIMINARY DRAFT
No. 3402

PREPARED BY
LEGISLATIVE SERVICES AGENCY
2005 GENERAL ASSEMBLY

DIGEST

Citations Affected: IC 6-3.1-29.

Synopsis: Enterprise zone incentives. Establishes the enterprise zone job creation tax credit.

Effective: January 1, 2006.

A BILL FOR AN ACT to amend the Indiana Code concerning taxation.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 6-3.1-29 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2006]:

Chapter 29. Enterprise Zone Job Creation Tax Credit

Sec. 1. As used in this chapter, "base taxable year" means either:

(1) in the case of a taxpayer that has not previously claimed a tax credit under this chapter, the taxpayer's taxable year that immediately precedes the taxable year for which the taxpayer first claims a credit under this chapter; or

(2) in the case of a taxpayer that has previously claimed a tax credit under this chapter, the most recent taxable year for which the taxpayer claimed a credit under this chapter.

Sec. 2. As used in this chapter, "board" refers to the enterprise zone board created by IC 4-4-6.1-1.

Sec. 3. As used in this chapter, "enterprise zone" means an enterprise zone created under IC 4-4-6.1.

Sec. 4. As used in this chapter, "full-time employee" means an individual who:

(1) is employed for consideration for at least thirty-five (35) hours each week; or

(2) renders any other standard of service generally accepted by custom or specified by contract as full-time employment.

Sec. 5. (a) As used in this chapter, "new employee" means a full-time employee who is:

(1) first employed by a taxpayer at the employer's enterprise zone location; and

(2) employed after December 31 of the employer's previous taxable year.

(b) The term "new employee" does not include:

(1) an employee of a taxpayer who performs a job that was

previously performed by another employee, if that job existed for at least six (6) months before hiring the new employee;

(2) an employee of a taxpayer who was previously employed in Indiana by a related member of the taxpayer and whose employment was shifted to the taxpayer after the taxpayer entered into the tax credit agreement; or

(3) a child, grandchild, parent, or spouse, other than a spouse who is legally separated from the individual, of any individual who is an employee of the taxpayer and who has a direct or an indirect ownership interest of at least five percent (5%) in the profits, capital, or value of the taxpayer. For purposes of this chapter, an ownership interest shall be determined in accordance with Section 1563 of the Internal Revenue Code and regulations prescribed under that Section.

(c) Notwithstanding subsection (b)(1), if a new employee performs a job that was previously performed by an employee who was:

(1) considered a new employee under this chapter; and

(2) promoted by the taxpayer to another job;

the employee may be considered a new employee.

Sec. 6. As used in this chapter, "pass through entity" has the meaning set forth in IC 6-3.1-10-1.7.

Sec. 7. As used in this chapter, "related member" has the meaning set forth in IC 6-3.1-13-8.

Sec. 8. As used in this chapter, "state tax liability" means a taxpayer's total tax liability that is incurred under:

(1) IC 6-3-1 through IC 6-3-7 (adjusted gross income tax);

(2) IC 6-5.5 (financial institutions tax); and

(3) IC 27-1-18-2 (insurance premiums tax);

as computed after the application of the credits that under IC 6-3.1-1-2 are to be applied before the credit provided by this chapter.

Sec. 9. As used in this chapter, "taxpayer" means a person, corporation, or pass through entity that has any state tax liability and conducts business operations in an enterprise zone.

Sec. 10. (a) A taxpayer is entitled to a credit against the taxpayer's state tax liability for a taxable year equal to the amount determined under the following STEPS:

STEP ONE: Determine the lesser of:

(A) the number of new employees employed at the taxpayer's enterprise zone location in the taxable year; or

(B) the result of:

(i) the total number of full-time employees employed by the taxpayer at the taxpayer's enterprise zone location in the taxable year; minus

(ii) the total number of full-time employees employed at

the taxpayer's enterprise zone location in the taxpayer's base taxable year.

STEP TWO: Multiply the amount determined under STEP ONE by two thousand dollars ($2,000).

(b) A taxpayer may petition the board to adjust the total number of full-time employees employed at the taxpayer's enterprise zone location in the taxpayer's base taxable year if the taxpayer shows that:

(1) a new investment;

(2) a new product line; or

(3) other similar circumstances;

will result in the creation of new full-time jobs at the taxpayer's enterprise zone location but would not qualify the taxpayer for a credit under this chapter because employment at the enterprise zone location would remain below the level established in the taxpayer's base taxable year.

(c) The board shall consider a petition submitted under subsection (b). The board may approve a taxpayer's petition if the board determines that adjusting the total of number of full-time employees employed at the taxpayer's enterprise zone location in the taxpayer's base taxable year is in the best interest of the enterprise zone in which the taxpayer is located. If the board approves the petition, the board shall determine the new number of full-time employees employed at the taxpayer's enterprise zone location in the taxpayer's base taxable year that in the board's discretion fairly and reasonably represents the taxpayer's employment situation under the totality of the circumstances described in the taxpayer's petition. The board shall certify the new number to be used for purposes of this chapter to the taxpayer and the department.

Sec. 11. (a) If the credit amount determined under section 10 of this chapter for a taxpayer in a taxable year exceeds the taxpayer's state tax liability for that taxable year, the taxpayer may carry the excess over to the following taxable years. The amount of the credit carryover from a taxable year shall be reduced to the extent that the carryover is used by the taxpayer to obtain a credit under this chapter for any subsequent taxable year. A taxpayer is not entitled to a carryback.

(b) A taxpayer is not entitled to a refund of any unused credit.

Sec. 12. If a pass through entity does not have state income tax liability against which the tax credit may be applied, a shareholder or partner of the pass through entity is entitled to a tax credit equal to:

(1) the tax credit determined for the pass through entity for the taxable year; multiplied by

(2) the percentage of the pass through entity's distributive

income to which the shareholder or partner is entitled.

Sec. 13. To receive the credit provided by this chapter, a taxpayer must claim the credit on the taxpayer's state tax return in the manner prescribed by the department. The taxpayer must submit to the department all information that the department determines is necessary for the calculation of the credit provided by this chapter.

SECTION 2. [EFFECTIVE JANUARY 1, 2006] **IC 6-3.1-29, as added by this act, applies only to taxable years beginning after December 31, 2005.**